

**Revenue Ruling**

**No. 05-001**

**March 1, 2005**

**Sales and Use Tax**

**Sales Tax on Repairs to Movable and Immovable Property**

The purpose of this Revenue Ruling is to discuss:

1. the requirements of the state sales tax law in regard to the payment of taxes on transactions for the repair and servicing of movable and immovable property;
2. the alternative means for the collection and payment of the tax liability; and
3. the responsibilities of the service providers and their customers for the collection and payment of the tax.

**Tax on Repairs to Movable Property Compared to Tax on Repairs to Immovable Property**

La. Rev. Stat. Ann. § 47:301(14)(g) defines taxable “sale of services” to include the furnishing of repairs to tangible personal, or movable property. When repair dealers furnish repairs to tangible personal property, the sales tax is levied on the full amount paid or charged for the service, which includes amounts separately invoiced for replacement parts that are added to the customers’ property. In these instances, repair dealers are the sellers of the parts furnished to customers. Credit can be claimed on dealers’ state sales tax returns for state advance sales taxes paid to wholesale suppliers on their acquisitions of the parts. In cases where repair dealers acquire repair parts from wholesale suppliers who have not charged the state advance sales tax, the repair dealers are not required to remit use tax on their acquisition of the parts. However, the sales taxes that the dealers collect from customers on repair service transactions must be remitted without a claim for any advance sales tax, since none was paid to wholesale suppliers.

If the repair dealer fails to collect the Louisiana state sales tax from a customer on a taxable repair of tangible personal property, the customer is required to remit the tax on the transaction directly to the department. Both the repair dealer, who has not collected the tax, and the customer, who has not paid the tax to the repair dealer, are liable for the tax until the tax is remitted to the state.

However, the state sales tax law does not levy a tax on the furnishing of repairs to immovable property. A business that furnishes repairs to immovable property is not furnishing taxable services. The business is also not engaged in the “retail sale” of tangible personal property with respect to the parts that are provided to customers in connection with repairs to immovable property, provided that title to or ownership of the parts does not transfer to customers until the parts have been incorporated into and made components of the customers’ immovable property. La. Rev. Stat. Ann. § 47:301(10)(a)(i) defines the term “retail sale” or “sale at retail”, in pertinent part, as a “sale to a consumer or to any other person for any purpose other than for resale as tangible personal property ...” Because the sale of the parts from the repair dealer to the customer is not a “retail sale” in these instances, the sale of the repair parts to the repair dealer is a “retail sale” upon which the repair dealer owes a sales or use tax. Credit cannot be taken for any Louisiana state sales taxes paid to suppliers on the repair dealers’ purchases of the parts.

When suppliers have not collected the Louisiana sales tax on sales of the parts to the repair dealers, the repair dealers must remit sales or use taxes directly to the department.

Repair dealers and their customers do, however, have some latitude in determining the nature of transactions that occur between them, including whether the repair parts are being sold as movable property before the materials are incorporated into immovable property, or whether the repair parts are not being sold until the parts are incorporated into and made components of the customers' immovable property, as in the scenario above. The terms under which the parts are sold must be clear to the transacting parties, and disclosed on the invoices of sale, in order for the sales or use tax to be collected, remitted, and paid according to law. The method used for the payment of sales or use taxes on each transaction must be consistent with the transacting parties' business practices associated with the transaction.

### **The Clyde Juneau Decision**

In *Clyde Juneau Company Inc. v. Caddo-Shreveport Sales and Use Tax Commission*, 28-433 (La. App. 2 Cir, 06/26/96), 677 So. 2d 610, the Second Circuit Court of Appeal determined that a contractor's itemization of the parts furnished as part of a repair service to immovable air conditioning and heating systems was not of itself an indication that the parts were taxable as sales of movable property, even when the parts were marked-up above the prices paid by the contractor. The contractor could not be held liable for the collection of the sales tax on the sale of the parts if the facts surrounding the transactions indicated that the parts were sold as immovable, rather than movable, property.

In *Clyde Juneau*, the taxpayer held himself out as a contractor and as a consumer of the tangible personal property used in performing repair services to immovable property. The Second Circuit court held that Clyde Juneau was liable for the payment of a sales or use tax on the contractor's acquisition prices of the materials used in performing the repairs, but was not liable for the collection of a sales tax from customers on the marked-up prices of the materials shown on repair service invoices to customers. The Court held that the fact that material prices were itemized separately on invoices to customers could not create the presumption by the tax authority that the materials were sold as movables, and thus making the contractor-taxpayer liable for the collection of sales tax on the itemized material amounts.

The decision in *Clyde Juneau*, however, does not preclude the determination by the department that repair parts are sold as movable property in cases where sales tax is actually collected on the separately invoiced prices of the repair parts. The department will view the invoicing and payment of the sales tax on the separately stated prices of repair parts as indication that the repair service provider and the customer intended the parts to have been sold and purchased as movable property. The department will not refund this sales tax to repair service customers on the basis of their claims that the parts were sold as immovable property, unless documentation is presented with the claims that the repair dealers also contemporaneously viewed their furnishing of the parts as sales of immovable property on which the repair dealers paid sales or use taxes, as explained above.

### **Tax Collection and Payment Procedures**

- A. Repair to movable property. The repair dealer must collect sales tax on the gross amount charged for the repair service, including separately stated amounts for services, materials, overhead, or profit. The customer is required to pay the tax to the repair dealer. The repair

dealer reports the sale of the repair service on his sales tax return. When remitting the tax, the repair dealer is authorized by La. Rev. Stat. Ann. § 47:306(B)(3) to deduct the state advance sales taxes that he paid on materials sold to and furnished to customers as part of the repair service.

On repair service transactions where repair dealers are not required to collect the state tax, such as on repair services rendered to governmental agencies that are excluded from the payment of the tax by La. Rev. Stat. Ann. § 47:301(8)(c), or on repair services that are rendered to businesses that hold direct payment numbers authorized by La. Rev. Stat. Ann. § 47:303.1, the state advance sales tax may be claimed on the dealers' sales tax returns.

- B. Repairs to Immovable Property, Tax Collected on Materials. The invoice for the repair service should describe the property being repaired in sufficient detail so that the immovable status of the property can be ascertained. The department will presume that the agreement between the repair dealer and the customer was that the repair materials were sold to customers as movable property before the repair dealer's services caused those materials to become components of the immovable property being repaired. The department will not issue refunds to customers for the sales taxes invoiced on separately stated charges for materials. This tax collection indicates the apparent intention of the transacting parties to have sold and purchased repair materials as movable property. When remitting the tax, the repair dealer is authorized La. Rev. Stat. Ann. § 47:306(B)(3) to deduct any state advance sales taxes that he paid on materials that were sold to customers as movable property.

Repair dealers who separately itemize repair materials, and who would collect tax on those materials except for their customers' presentation of direct payment exemption certificates and numbers, must clearly state the direct payment information on the invoices and other records of the transactions. The customers will then be liable for the direct remittance of the tax on the amounts itemized for materials. In such instances, the department will not entertain any claims by the customers that taxes on the materials are not due because the repair materials were immovable property when sold.

- C. Repairs to Immovable Property, Tax Not Collected. As indicated above, the invoice for the repair service should describe the property being repaired in sufficient detail so that the immovable status of the property can be ascertained. If the repair dealer's normal business practice when repairing immovable property is to retain title to or ownership of any repair parts until the parts are incorporated into and made components of the immovable property being repaired, the repair dealer will be considered the retail purchaser and consumer of the repair parts used in making the repairs to immovable property. Credit cannot be taken for Louisiana state sales taxes paid to suppliers on the repair dealers' purchases of the parts. In cases where suppliers have not collected the Louisiana sales tax on the sales of the parts to the repair dealers, the repair dealers must remit sales or use taxes directly to the department on their purchases of the parts.

Repair dealers who retain title to repair materials until the repair materials are rendered immovable, as explained above, will incur the consumer sales or use tax liability on their acquisitions of the parts, even when repair services are rendered for persons who are

exempt from sales or use taxes on their own direct purchases of tangible personal property, such as the governmental entities who are excluded from the payment of sales or use taxes by La. Rev. Stat. Ann. § 47:301(8)(c).

Questions or comments about this matter can be directed to the department's Policy Services Division at (225) 219-2780.

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